

SENATE BILL No. 89

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5; IC 8-1-2.2-31; IC 20-12; IC 23-13-18-28.

Synopsis: Serial meetings and electronic meetings. Provides that, absent express statutory authorization, a member of the governing body of a public agency who is not physically present at a meeting but communicates with other members of the governing body during the meeting by an electronic means of communication (excluding electronic mail) may not participate in a final action taken at the meeting or be considered to be present at the meeting. Allows the board of trustees of a state educational institution and the governing body of a joint agency of a municipal utility program to conduct meetings by electronic means. Provides that a series of gatherings by members of the governing body of a public agency violates the open door law if: (1) less than a quorum of members of the governing body attend each gathering; (2) the total number of members attending all gatherings at least equals a quorum of the governing body; (3) all the gatherings concern the same subject matter and are held within a period of not more than seven days; and (4) the gatherings are held for the purpose of conducting official business.

Effective: July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 89

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-1.5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Except as
3 provided in section 6.1 of this chapter, all meetings of the governing
4 bodies of public agencies must be open at all times for the purpose of
5 permitting members of the public to observe and record them.

6 (b) A secret ballot vote may not be taken at a meeting.

7 (c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not
8 violate this section.

9 (d) **Unless expressly authorized by statute, a member of a**
10 **governing body of a public agency who is not physically present at**
11 **a meeting of the governing body but communicates with the**
12 **governing body members during the meeting by telephone,**
13 **computer, videoconferencing, or any other electronic means of**
14 **communication may not:**

15 **(1) participate in final action taken at the meeting; or**

16 **(2) be considered to be present at the meeting.**

17 SECTION 2. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA



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CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2006]: **Sec. 3.1. (a) A governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body that meets all the following criteria:**

- (1) Each gathering is attended by at least two (2) members but less than a quorum of the members of the governing body.**
- (2) The sum of the number of members of the governing body attending each gathering at least equals a quorum of the governing body.**
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) days.**
- (4) The gatherings are held to take official action on public business.**

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means, excluding electronic mail.

(b) A gathering under subsection (a) does not include:

- (1) a social or chance gathering not intended to avoid this chapter;**
- (2) an on-site inspection of any project or program;**
- (3) traveling to and attending meetings of organizations devoted to the betterment of government;**
- (4) a caucus; or**
- (5) a meeting between one (1) member of the governing body and at least one (1) other individual who is not a member of the governing body concerning public business.**

(c) A violation described in subsection (a) is subject to section 7 of this chapter.

SECTION 3. IC 5-14-1.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) An action may be filed by any person in any court of competent jurisdiction to:

- (1) obtain a declaratory judgment;**
- (2) enjoin continuing, threatened, or future violations of this chapter; or**
- (3) declare void any policy, decision, or final action:**
 - (A) taken at an executive session in violation of section 3(a) of this chapter;**
 - (B) taken at any meeting of which notice is not given in accordance with section 5 of this chapter;**

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(C) that is based in whole or in part upon official action taken at any:

(i) executive session in violation of section 3(a) of this chapter; ~~or at any~~

(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter; or

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public

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had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section.

SECTION 4. IC 8-1-2.2-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 31. (a) This section applies to a meeting of the board of commissioners of a joint authority at which at least a quorum of**

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the board is physically present at the place where the meeting is conducted.

(b) A member of the board of commissioners of a joint authority may participate in a meeting of the board of commissioners by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member of the board of commissioners of a joint authority who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of a meeting of the board of commissioners of a joint authority prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 5. IC 20-12-1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) This section applies to a meeting of the board of trustees of any state educational institution (as defined in IC 20-12-0.5-1) at which at least a quorum of the board is physically present at the place where the meeting is conducted.

(b) A member of the board may participate in a meeting of the board by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

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(3) each member who was absent.

SECTION 6. IC 20-12-61-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 5.5. (a) This section applies to a meeting of the state board at which at least a quorum of the board is physically present at the place where the meeting is conducted.**

(b) A member of the state board may participate in a meeting of the state board by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a means of communication described in subsection (b); and

(3) each member who was absent.

SECTION 7. IC 23-13-18-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 28. (a) This section applies to a meeting of the board of trustees at which at least a quorum of the board is physically present at the place where the meeting is conducted.**

(b) A member of the board may participate in a meeting of the board by using a means of communication that permits:

(1) all other members participating in the meeting; and

(2) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting.

(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.

(d) The memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of:

(1) each member who was physically present at the place where the meeting was conducted;

(2) each member who participated in the meeting by using a

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- 1 means of communication described in subsection (b); and
- 2 (3) each member who was absent.

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